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EXAMINER

NALVEN, ANDREW L

ART UNIT	PAPER NUMBER
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2134

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/799,229

Applicant(s)

BARTON ET AL.

Examiner

Andrew L. Nalven

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-38 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-38 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers


- ☐ The specification is objected to by the Examiner.
- ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


KAMBIZ ZAND
PRIMARY EXAMINER

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/30/04, 7/26/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. Claims 1-38 are pending.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-89 of U.S. Patent No. 6,941,464,567. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the definition of the data to be analyzed: "specific data" in the present application and "specific conduit data" in the cited patent. The information contained in "specific conduit data" and "specific data" are dissimilar; however, the environments of the inventions are analogous. Further, the present application's claim of data is broader than that of the cited patent and thus the narrower patented limitation anticipates the broader limitation of the present invention.

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Finally, the claims of the present application and the cited patent are directed towards the locking of data to a specific analyzer program and do not introduce limitations unique to a particular type of data. Thus, the identified claims are not patentably distinct from the cited prior art.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 4-6, 8-16, 19-21, 27-30, and 32-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Graunke et al US Patent No 5,991,399. Graunke teaches a system for securely distributing a private key to a trusted entity.

6. With regards to claims 1, 30, 34-36, Graunke teaches the generating of a first key, associating the first key with both specific data and a specific copy obtained with the logging device and a specific copy of an analyzer program (Graunke, column 8 lines 19-28 first key viewed as "asymmetric private key" from line 26, logging inherently done in recording a dvd or cd), and generating gatekeeper logic that enables the specific copy of the analyzer program to analyze the specific data only if the first key associated with the specific copy of the analyzer program corresponds with a second key

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associated with the specific data obtained with the logging device (Graunke, column 8 lines 32-66).

7. With regards to claims 4, 13-14, and 33, Graunke teaches the associating of the first key with a specific copy of the analyzer program including compiling the specific copy of the analyzer program to incorporate the first key (Graunke, column 8 lines 24-34).

8. With regards to claims 5, Graunke teaches the generating of gatekeeper logic including associating the gatekeeper logic with the specific copy of the analyzer program (Graunke, column 7 lines 28-40).

9. With regards to claims 6, 12 and 32, Graunke teaches that associating gatekeeper logic with the specific copy of the analyzer program includes compiling the specific copy of the analyzer program to incorporate gatekeeper logic (Graunke, column 8 lines 32-49, column 7 lines 8-15) and providing the user with the compiled specific copy of the analyzer program (Graunke, column 6 lines 22-45).

10. With regards to claims 8, Graunke teaches a user of the analyzer program supplying the specific data to a supplier of the analyzer program (Graunke, column 8 lines 10-18, column 6 lines 17-35) and a locking of the specific data obtained with the logging device to the specific copy of the analyzer program occurs on a computer system of the supplier (Graunke, column 7 lines 16-40).

11. With regards to claims 9, Graunke teaches the supplier providing the locked specific data and the specific copy of the analyzer program to the user (Graunke, column 6 lines 22-45).

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12. With regards to claims 10, Graunke teaches the supplier of the program supplying a locking logic and a copy of the program to the user (Graunke, column 6 lines 36-37, column 3 line 61 – column 4 line 7) and the locking of the data to the copy of the program occurring on a computer system of the user utilizing the supplied locking logic and the supplied program (Graunke, column 7 lines 40-46 and column 8 lines 32-46).

13. With regards to claims 11 and 37-38, Graunke teaches the providing of a user of the analyzer program with a specific copy of the analyzer program and specific data, obtained with the logging device, that are locked utilizing at least a first key (Graunke, column 6 lines 36-37) and providing the user of the analyzer program with gatekeeper logic that enables the specific copy of the analyzer program to analyze the specific data only if the first key associated with the specific copy of the analyzer program corresponds with a second key associated with the specific data obtained with the logging device (Graunke, column 8 lines 32-66),

14. With regards to claims 15-16, Graunke teaches the locking of a specific copy of the application program to specific data obtained with the logging device so that the specific copy of the application program is able to access only the specific data obtained with the logging device (Graunke, column 3 line 61 – column 4 line 7) having as associated key that corresponds with a second key associated with the specific copy of the application program (Graunke, column 8 lines 32-66) and distributing the locked specific copy of the application program and specific data to a user (Graunke, column 6 lines 28-37).

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15. With regards to claim 19, Graunke teaches locking the specific copy of the application program to the specific data including generating a gatekeeper application that allows utilization of the specific copy of the application program when accessing the specific data (Graunke, column 8 lines 10-46) and disallows utilization of the application program when accessing other data (Graunke, column 8 lines 55-60).

16. With regards to claim 20, Graunke teaches locking the specific copy of the application program to the specific data including compiling source code for the application program with the first key and the gatekeeper application into compiled object code for the specific copy of the application program (Graunke, column 7 lines 28-58).

17. With regards to claim 21, Graunke teaches distributing gatekeeper application to user (Graunke, column 8 lines 32-34) and the gatekeeper application accessing at least the first key for the purposes of allowing or disallowing utilization of the specific application program (Graunke, column 8 lines 61-66).

18. With regards to claim 27, Graunke teaches the purging of locking logic from a computer system subsequent to the locking of the specific copy of the application program to the specific data (Graunke, Figure 5, column 9 line 17 – column 10 line 16).

19. With regards to claim 28, Graunke teaches the propagating of specific data over a communications network (Graunke, Figure 2).

20. With regards to claim 29, Graunke teaches the supplying of the software supplier with a physical storage medium to store specific data (Graunke, column 6 lines 28-33).

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 2-3 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graunke et al US Patent No 5,991,399 in view of Liu US Patent No 6,687,375.

23. With regards to claims 2-3, 17-18, and 30, Graunke as described above, fails to teach generating keys in the form of random character or number sequences.

However, Liu teaches the generation of keys using a random number generator (Liu, column 4 lines 48-52). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize Liu's method of randomly generating keys because it offers the advantage of increasing the strength of encryption by using random keys that are hard to crack (Liu, column 1 lines 52 – column 2 lines 28).

24. Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graunke et al US Patent No 5,991,399 in view of Thomlinson et al US Patent No 6,389,535.

25. With regards to claim 22-23, 26, Graunke as described above fails to teach the sending of the specific data from the user to a software supplier and the software supplier executing locking logic. Thomlinson teaches the user sending specific data to

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a software supplier so that the software supplier may execute the locking logic (Thomlinson, Figure 2, column 6 line 62 – column 7 line 6). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize Thomlinson's method of having a user send data to a software supplier to be locked because it offers the advantage of providing security for data secrets while minimizing the role of the user in the actual cryptographic operations (Thomlinson, column 1 lines 40-59).

26. With regards to claim 24, Graunke as modified teaches the propagating of specific data over a communications network (Graunke, Figure 2).

27. With regards to claim 25, Graunke as modified teaches the supplying of the software supplier with a physical storage medium to store specific data (Graunke, column 6 lines 28-33).

28. Claims 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graunke et al US Patent No 5,991,399 in view of Shambroom US Patent No 6,301,661.

29. With regards to claim 7, Graunke as described above fails to teach the Java programming language being used with the analyzer program. Shambroom teaches Java program code being downloaded and incorporated into a program (Shambroom, column 6 lines 42-46). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize Shambroom's method of using Java and Java Virtual Machines because it offers the advantage of providing a "mobile code"

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technology that enables downloaded content to be platform independent (Shambroom, column 2 lines 8-24).

Conclusion


30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew L. Nalven whose telephone number is 571 272 3839. The examiner can normally be reached on Monday - Thursday 8-6, Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on 571 272 3811. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrew Nalven

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KAMBIZ ZAND
PRIMARY EXAMINER